

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS**

**FOR THE FOURTH CIRCUIT**

MOM'S, INC.; JOHN ROBERT  
COLAPRETE; THEODORE MAZUR BONK;  
EDY MILLER; JENNIFER MARIE  
MILLER, a minor who sues by Edy  
Miller, her parent and next friend;  
RICHARD SCOTT MILLER, II, a minor  
who sues by Edy Miller, his parent  
and next friend; RICHARD SCOTT  
MILLER,  
Plaintiffs-Appellees,

v.

JUDITH WEBER; CLYDE SANTANA; BOB  
DUNFORD; DAVE ALTMAN; DARYL  
WARE; JAMES EDWARDS; ROGER  
WARREN; DAVID HUFF; CRAIG  
CARMEN; JOYCE SUTTON; LEON

No. 96-2769

COLEMAN; DAVID LIBENGOOD; BOBBY  
BASS, individually and as Special  
Agents for the Department of  
Alcoholic Beverage Control of  
Virginia,  
Defendants-Appellants,

and

GEORGE OVERSTREET, individually  
and as Police Officer of the City of  
Norfolk Police Department, Norfolk,  
Virginia; CAROL E. WILLMAN,  
individually and as Special Agent  
for the Internal Revenue Service,  
Norfolk, Virginia; THE CITY OF  
VIRGINIA BEACH; CITY OF NORFOLK;  
UNKNOWN FEDERAL AGENTS;

UNKNOWN STATE AGENTS; UNKNOWN  
CITY OF VIRGINIA BEACH AGENTS;  
UNKNOWN CITY OF NORFOLK AGENTS;  
CHERYL L. KAST, individually and  
as Group Manager for the Internal  
Revenue Service; JOHN C.  
MCDOUGAL, individually and as  
Special Litigation Assistant for the  
Internal Revenue Service;  
ROBERT E. BURGESS, individually  
and as Special Agent for the  
Internal Revenue Service;  
ARLENE T. CAMPSSEN, individually  
and as Special Agent for the  
Internal Revenue Service; TIMOTHY  
DARUK, individually and as Special  
Agent for the Internal Revenue  
Service; MICHAEL E. DUNLOW,  
individually and as Special Agent  
for the Internal Revenue Service;  
DONNA L. EASON, individually and  
as Tax Fraud Investigative Aide for  
the Internal Revenue Service; JOHN  
BRINK, individually and as Special  
Agent for the Internal Revenue  
Service,  
Defendants.

Appeal from the United States District Court  
for the Eastern District of Virginia, at Norfolk.  
J. Calvitt Clarke, Jr., Senior District Judge.  
(CA-96-246)

Argued: June 6, 1997

Decided: October 14, 1998

Before RUSSELL,\* WIDENER, and WILKINS, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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## **COUNSEL**

**ARGUED:** John Patrick Griffin, Assistant Attorney General, OFFICE OF THE ATTORNEY GENERAL, Richmond, Virginia, for Appellants. Robert John Haddad, SHUTTLEWORTH, RULOFF & GIORDANO, P.C., Virginia Beach, Virginia, for Appellees. **ON**

**BRIEF:** James S. Gilmore, III, Attorney General, OFFICE OF THE ATTORNEY GENERAL, Richmond, Virginia, for Appellants. Beverly A. Rebar, SHUTTLEWORTH, RULOFF & GIORDANO, P.C., Virginia Beach, Virginia; James C. Breeden, HUBBARD, BREEDEN & TERRY, Irvington, Virginia; Alan W. Clark, Chassell, Missouri, for Appellees.

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Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

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## **OPINION**

PER CURIAM:

Mom's, Inc.<sup>1</sup> brought this action claiming that a number of individ-

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\*Judge Russell heard oral argument in this case but died prior to the time the decision was filed. The decision is filed by a quorum of the panel. See 28 U.S.C.A. § 46(d) (West 1993).

<sup>1</sup> Plaintiffs are Mom's, Inc.; John Robert Colaprete; Theodore Mazur Bonk; Edy Miller; Jennifer Marie Miller; Richard Scott Miller, II; and Richard Scott Miller. For ease of reference, we refer to Plaintiffs collectively as "Mom's, Inc."

uals employed by the Virginia Department of Alcohol Beverage Control (ABC)<sup>2</sup> and employees of the Internal Revenue Service violated its constitutional rights under the Fourth, Fifth, and Fourteenth Amendments and violated various state laws in connection with obtaining and executing a search warrant in April 1994. The ABC agents filed a motion to dismiss, arguing that the action was barred by the Tax Injunction Act, see 28 U.S.C.A. § 1341 (West 1993), and the principles of comity affirmed in Fair Assessment in Real Estate Ass'n v. McNary, 454 U.S. 100 (1981). The district court disagreed, see Mom's, Inc. v. Weber, 951 F. Supp. 92 (E.D. Va. 1996), and the ABC agents sought review of the ruling in this court. We conclude that we lack appellate jurisdiction to consider this matter because the order of the district court is not a final order, see 28 U.S.C.A. § 1291 (West 1993); is not an appealable interlocutory order, see 28 U.S.C.A. § 1292 (West 1993 & Supp. 1998); and is not an appealable collateral order, see Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541, 545-47 (1949). Accordingly, we dismiss.

#### DISMISSED

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<sup>2</sup> The appealing ABC agents are Judith Weber, Clyde Santana, Bob Dunford, Dave Altman, Daryl Ware, James Edwards, Roger Warren, David Huff, Craig Carman, Joyce Sutton, Leon Coleman, David Liben-good, and Bobby Bass.